IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDEABAD

PRESENT:

THE HONB'LE SRI JSUTICE J. CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE P. SWAROOP REDDY

W.P.No. 6140 of 2007
Dated: -04-2007

Between:
The Union of India represented by its
General Manager, S.C.Railway,
Rail Nilayam, Secunderabad and another

...Petitioners

and

A. Subrahmanyam

..Respondent

JC & PSR, JJ.

W.P.No. 6140 of 2007

O r d e r:

(Per P. Swaroop Reddy, J.)

This writ petition is filed by the Union of India against the orders of the learned Central Administrative Tribunal, Hyderabad

Bench, Hyderabad in O.A.No. 654 of 2006 dated:19.2.2007 filed by the sole respondent herein.

2. The facts are as follows: The respondent joined as a Clerk Gr.II in Accounts Department of South Central Railway having been selected as a ST Candidate – *"Konda Kapu"* and subsequently promoted as an Accounts Officer. On 1.8.2006 he made representation to the petitioners herein to allow him to go on voluntary retirement with effect from 31.8.2006. He also requested for waiving of notice period of three months. The second petitioner herein vide Lr.No.AAD/SO5 dated:30.10.2006 conveyed the orders of the competent authority informing that it is not possible to accept his voluntary retirement, as his caste status was to be investigated. Aggrieved by the said order of the petitioners herein, the respondent filed the original application with the following prayer.

> "*…. To call for the records pertaining to the Letter No.AAD/SO5 dated:30-10-2006 issued by FA & CAO/Stores/SC Railway and declare the same as null and void and violative of Articles 14 and 21 of the Constitution and consequently direct the respondents to treat the applicant as having retired from service in terms of rules in force with all consequential benefits…."*

3. The Petitioners herein filed their counter in the O.A., stating that the father of the respondent by name Veera Bhadra Rao worked as Senior Divisional Accounts Officer, South Central Railway, Vijayawada. While he was in service a major penalty charge sheet was issued to him on 29.12.1993 based on Vigilance investigation for securing appointment in railways on the basis of fake ST Caste Certificate. The District Collector, West Godavari at Eluru who enquired into the matter reported that he belongs to Kapu community,

but not to Konda Kapu community. Thereafter the respondents requested the District Collector, Chennai to verify the report about the genuineness of the Caste Certificate issued to the **present respondent.** Before receipt of the reply from the District Collector, Chennai about the genuineness of the caste certificate issued, the respondent, requested him to be allowed to go on voluntary retirement by waiving three months notice period. The petitioners herein averred in their counter that if it is proved that the respondent does not belong to ST community, he is liable for action, as the legality of his entry into railways would depend on the report of the Collector and accordingly the petitioners herein have rightly rejected the application of the respondent for voluntary retirement.

4. The learned tribunal has allowed the original application filed by the respondent herein and directed the present petitioners to allow the respondent to go on voluntary retirement and as against the same the present writ petition is filed.

5. Thus it is the case of the petitioners that the father of the respondent entered railway service by submitting bogus caste certificate, which is still under enquiry and the Caste Certificate produced by the respondent, also has to be enquired into and as such the respondent cannot be allowed to retire voluntarily. It is also contended on behalf of the petitioners that Rules 1802 and 1803 of the Railway Rules would not allow the respondent to retire voluntarily without valid grounds.

6. The father of the respondent joined service long back, as he has retired, undisputedly, about 4 – 5 years back. It appears that as long as he was in service, no enquiry with regard to the genuineness of his Caste Certificate was conducted. It appears that as the father of the respondent was treated as ST, on the basis of the Caste

Certificate submitted by him, which was accepted by the authorities, at that time, obviously, the present respondent must have submitted ST Caste Certificate; as he cannot belong to a different caste than his father. Even till now, there is no finality with regard to the genuineness of the Caste Certificate submitted by the father of the respondent. Now when the respondent wanted to voluntarily retire from service, the contention of the petitioners herein is that only in order to escape the possible action that would be initiated against him, for producing false caste certificate, he wants to go on voluntary retirement from service, in case he voluntarily retires from service, he would be drawing retirement benefits, which would be difficult to recover from him, in case it is ultimately found that he has submitted false caste certificate.

7. Even assuming that all the above contentions of the petitioners are correct, we feel that the respondent cannot be prevented from retiring voluntarily from service, as no disciplinary proceedings are pending against him. In such an event there are no Rules preventing him from voluntarily retiring from service. Rules 1802 and 1803 of Railway Rules are relevant. Rule 1802 (ii) reads as follows:

> *"A railway servant, referred to in sub-rule (1) may make a request in writing to the appointing authority to accept a notice of less than three months, giving reasons therefor. On receipt of a request under this sub-rule, the appointing authority may consider such request for curtailment of the period of notice of three months on merits and, if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months, on the condition that the railway servant, shall not apply for commutation of a part of his pension before the expiry*

of the period of notice of three months."

The above quoted rule deals with the retirement of Railway servant voluntarily from service; but not preventing him from voluntarily retiring from service. On the other hand Rule 1803 (b) (1) reads:

> *" A railway servant who is governed by any of the pension rules, may retired from service at any time after completion of thirty years of service qualifying for pension, after giving notice in writing to the appropriate authority, at least three months before the intended date of retirement.*
>
> *Provided that it shall be open to the appropriate authority to withhold permission to a railway servant under suspension, who seeks to retirement under this clause."*

It allows the Railway Servant after completing thirty years of service to retire voluntarily by giving three months notice, if he is not under suspension.

8) Thus, Rule 1802 (b)(2) gives discretion to the authorities for curtailment of issuance of three months notice. Further more Rule 1803 (b)(1) permits the railway servant to voluntarily retire from service after completing thirty years of service, if he is not under suspension.

9. As per the averments made by the respondent in O.A., he joined the railway service on 9.11.1972 and as such he has completed thirty years of service also. Thus under Rule 1803 (b)(1) of Railway Rules the respondent is entitled to go on voluntary retirement. It is a clear case where the respondent cannot be restrained from voluntarily retiring from service. Thus, we see no grounds to interfere with the findings recorded by the learned Central Administrative Tribunal, Hyderabad.

10. In the result the writ petition is dismissed at the admission

stage. No costs.

J.CHELAMESWAR, J.

-04--2007

*__BVS__

P. SWRAOOP REDDY, J.